

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Central Illinois Public Service Company	:	
d/b/a AmerenCIPS	:	
	:	07-0532
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant	:	
To Section 8-406 of the Illinois Public	:	
Utilities Act, to construct, operate and	:	
Maintain new 138,000 volt electric lines in	:	
Madison County, Illinois.	:	

**REPLY BRIEF OF THE STAFF OF THE  
ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice, 83 Ill. Adm. Code 200.800, respectfully submits its Reply Brief in the above-captioned proceeding. On June 23, 2008, Initial Briefs were filed in this proceeding by Central Illinois Public Service Company d/b/a AmerenCIPS (“AmerenCIPS” or the “Company”), WRB Refining, LLC (“WRB”), and Staff. Staff herein replies to both the Company’s and WRB’s Initial Briefs (“IB”).

**I. ARGUMENT**

**A. The Commission Should Not Approve a Section 8-503 Order  
for AmerenCIPS to Construct the Secondary Transmission  
Line**

AmerenCIPS and Staff disagree on only one issue: whether the Commission should issue an Order pursuant to Section 8-503 of the Illinois

Public Utilities Act (the “Act”), 220 ILCO 5/8-503, for both, or only one, of the 138 kilovolt (“kV”) transmission lines that AmerenCIPS proposes to construct. (AmerenCIPS IB, p.1) Staff, therefore, will limit its reply to AmerenCIPS’ Initial Brief to this one issue.

## **1. Staff’s Position**

AmerenCIPS alleges it has demonstrated it has met the requirements of Section 8-503 of the Act, and argues the Commission should issue an Order pursuant to Section 8-503 of the Act for both of the transmission lines that it proposes to be constructed over routes identified as COP Sub Tap 1-Primary and COP Sub Tap 2 -Primary. (*Id.*, p. 1) However, Staff witness Greg Rockrohr testified that only one of the two transmission lines that AmerenCIPS proposes is necessary to satisfy the needs of its customers, and that AmerenCIPS proposes building the second 138 kV transmission line because WRB requested the second line merely for improved reliability. (ICC Staff Exhibit 1.0, pp. 9-10)

Mr. Rockrohr stated he knows of no reason for AmerenCIPS to request an Order pursuant to Section 8-503 of the Act other than to obtain eminent domain authority to obtain property rights. Mr. Rockrohr further explained that, while he was not an attorney, his understanding was that if the Commission granted AmerenCIPS an Order pursuant to Section 8-503 of the Act for both lines, as AmerenCIPS requested, then in practical terms the Commission would be granting eminent domain authority to AmerenCIPS to obtain the property rights necessary to build both lines. Mr. Rockrohr pointed out that in Docket No. 05-0188, the Commission appeared to confirm in its Final Order that when an Order

pursuant to Section 8-503 of the Act is entered “...Section 8-509 of the Act then authorizes the utility to use the power of eminent domain if necessary to obtain property necessary for the improvements.” (*Id.*, pp. 8-9)

AmerenCIPS stated it is not seeking eminent domain authority in this proceeding, but would seek such authority from the Commission in a separate proceeding if negotiations with property owners for the necessary property rights are unsuccessful. (AmerenCIPS IB, p. 8) Mr. Rockrohr pointed out that his understanding of Section 8-509 of the Act, 220 ILCS 5/8-509, which contemplates the granting of eminent domain authority, led him to conclude that in any such future proceeding the Commission would be obligated to grant AmerenCIPS eminent domain authority for the transmission lines if the Commission had previously issued an Order pursuant to Section 8-503 of the Act for those lines. Section 8-509 of the Act, titled Eminent Domain, states, in relevant part:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

(ICC Staff Exhibit 1.0, p. 8)

Mr. Rockrohr stated his position in this proceeding was that it would be reasonable for AmerenCIPS to construct both transmission lines that it proposes pursuant to Section 8-406 of the Act, 220 ILCS 5/8-406, as long as: (1) WRB pays for the second transmission line, and (2) constructing the second transmission line does not inconvenience area property owners. However, Mr.

Rockrohr emphasized that AmerenCIPS should not receive eminent domain authority to construct facilities that are not necessary in order to provide adequate service to its customers. If AmerenCIPS cannot through negotiations with area landowners obtain the property rights necessary to build the second transmission line over the route designated as COP Sub Tap 1-Primary, then that transmission line should not be built. (ICC Staff Exhibit 2.0, pp. 2-3)

Since the only reason for AmerenCIPS to request a Commission Order pursuant to Section 8-503 of the Act would be to obtain eminent domain authority to obtain property rights, and since it would be inappropriate for AmerenCIPS to receive eminent domain authority to build the transmission line on the route designated as COP Sub Tap 1-Primary, Staff recommended, and still recommends, that the Commission deny AmerenCIPS' request for an Order pursuant to Section 8-503 of the Act for the secondary 138 kV transmission line proposed for the route designated as COP Sub Tap 1-Primary.

## **2. Section 8-503 and Section 8-509 of the Act**

AmerenCIPS has suggested that eminent domain is not at issue in this proceeding as its Petition was brought only under Sections 8-406 and 8-503 of the Act. Moreover, in the event the Company will need eminent domain authority, it will file a new Petition under Section 8-509 of the Act. (AmerenCIPS IB, pp. 8-9) However, it is not clear what the purpose of or standards for another, separate proceeding under Section 8-509 of the Act would be.

On its face, the language in Section 8-509 of the Act leads to the conclusion that a separate proceeding to apply for eminent domain authority

would be limited to making a determination as to whether the Commission has entered an Order under Section 8-503 of the Act. If that reading were correct, then a Petition for Section 8-509 eminent domain authority would simply need to reference the prior Commission Order under Section 8-503 of the Act. Under that scenario, it is not clear that landowners would understand the implication of the Section 8-503 proceeding until the second proceeding, under Section 8-509, was initiated. Landowners, who might participate if they believed eminent domain was an issue, may be unaware of the consequences of a Section 8-503 Order, and thus choose not to participate in a Section 8-503 proceeding. Making the process as transparent as possible is beneficial to both the Commission and landowners. The participation of landowners will help to assure the Commission that it has a full and complete record so that the Commission can make a fully-informed decision about the line route. Second, landowners should have an opportunity to participate because their property rights are at issue.

By requiring a utility to state in its Petition that it is requesting Section 8-509 eminent domain authority, the Commission will remove any question as to whether the affected landowners understand the consequences of the proceeding. The Commission should not assume that landowners are aware of the possibility that the utility will receive eminent domain authority as a result of a Section 8-503 proceeding. From Staff's perspective, it would be prudent to err on the side of adding transparency to the process in order to minimize the potential that interested parties are not aware of the issues at stake.

The Company argues that property owners have been provided the appropriate notification regarding AmerenCIPS' request for Section 8-406 Certificate of Public Convenience and Necessity ("Certificate") in the instant proceeding. (AmerenCIPS IB, p. 11) However, AmerenCIPS does not indicate whether the property owners are aware that the Company has also requested Commission approval to order construction pursuant to Section 8-503 of the Act, which could very well be all that is necessary for the Commission to grant eminent domain authority over their property pursuant to Section 8-509 of the Act. AmerenCIPS also omits any discussion regarding whether or not it is likely that it will need to seek eminent domain authority. In fact, even AmerenCIPS acknowledges the possibility that negotiations with property owners may be unsuccessful. (*Id.*, p. 8)

A review of recent Commission Orders demonstrates that requests for relief under Sections 8-503 and 8-509 of the Act have been treated differently in various dockets. The first difference is the various views of how eminent domain authority is derived. The second difference is the emphasis placed upon the requirement for a reasonable attempt to acquire the property.

In Docket No. 05-0188, the authority for eminent domain was derived from the grant of authority or direction to construct granted under Section 8-503 of the Act. In Docket No. 06-0179, eminent domain was treated as though it were a separate issue to be addressed later in a separate Section 8-509 proceeding. In two recent petroleum pipeline cases, Docket Nos. 06-0458 and 06-0470, eminent

domain authority was requested in the Petition under Section 8-509 of the Act, but the analysis was part of the Section 8-503 analysis.

Staff recommends that the Commission address how public utilities and common carriers should proceed when requesting an Order pursuant to Section 8-503 and Section 8-509 of the Act. Staff advocates that the Commission find that the public utilities and common carriers should request relief under Sections 8-503 and 8-509 of the Act simultaneously in one docket. This would allow the public utility or common carrier, Staff, and any intervenors equal opportunity to address all the issues in one proceeding.

Section 8-503 of the Act states, in relevant part:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are *necessary* and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, *to promote the security or convenience of its employees or the public*, or in any other way *to secure adequate service or facilities*, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location... (Emphasis added)

Once a determination has been made that a transmission line is necessary to promote the security or convenience of a utility's employees or the public, or to secure adequate service or facilities, Staff is not aware of any argument that could be raised by a landowner to effectively challenge the use of eminent domain for a piece of property on the approved route. The Company has stated that landowners could challenge eminent domain on the basis that good faith negotiations had not taken place. (AmerenCIPS IB, p. 13) Although

the Commission could require the utility to demonstrate that it had made a reasonable attempt to acquire the necessary land through negotiation, in a Section 8-509 proceeding, this does not address Staff's concern that the landowner be given an opportunity to challenge the use of eminent domain. A utility's failure to demonstrate reasonable attempts to acquire the property might delay, but would not eliminate, the threat of eminent domain.

If a landowner could effectively challenge the use of eminent domain subsequent to the entry of an Order approving a specific route under Section 8-503, the result would be that one portion of the line could not be completed. Obviously, a transmission line which is interrupted is not capable of performing the function for which it was built. The utility would then be in the awkward position of having to modify the approved route. It does not seem likely that the failure of a utility to demonstrate reasonable attempts to acquire the property would result in a denial of the use of eminent domain for that particular portion of the route. It seems more likely that eminent domain would be delayed so that the public utility would have an opportunity to engage in negotiations, and if the subsequent negotiations failed, then the utility would return to the Commission, once again seeking eminent domain authority.

Staff's reason for recommending that the Commission address Sections 8-503 and 8-509 of the Act simultaneously is to provide the landowners with the maximum opportunity to participate in the Commission proceedings. Landowners are a valuable source of information regarding the line route itself. Landowners are in a unique position to be aware of not only their land, but the



surrounding area and may be able to provide information necessary to have a full and complete record.

In Docket No. 05-0188, Commonwealth Edison Company (“ComEd”) filed an Application for a Certificate pursuant to Section 8-406 of the Act and authority pursuant to Section 8-503 of the Act to construct, operate, and maintain new 345,000 and 138,000 kV electric lines. The Commission described Section 8-503 of the Act as follows in the Final Order:

Under the terms of Section 8-503 of the Act, when the Commission finds that improvements or additions to existing plant are necessary and ought reasonably be made, it is authorized to enter an order directing that the improvements be made. *When such an order is entered, Section 8-509 of the Act then authorizes the utility to use the power of eminent domain if necessary to obtain property necessary for the improvements.* The issue before the Commission is whether an 8-503 order empowering ComEd to use eminent domain, should be entered in this case.

(Order, Docket No. 05-0188, February 23, 2006, p. 1, emphasis added)

This statement is consistent with a reading of Section 8-509 of the Act to mean that an Order granting Section 8-503 relief provides eminent domain authority without further action on the part of the utility.

Docket No. 05-0188 was bifurcated. Staff addressed the Section 8-406 Certificate and Section 8-503 authority separately. After reviewing ComEd’s load projections, Staff agreed that ComEd needed an additional power source to downtown Chicago and opined that ComEd was capable of managing the construction. The Commission entered an Interim Order granting the Section 8-406 Certificate on November 8, 2005. The Section 8-503 issue of whether the Commission should order ComEd to construct the project was briefed separately. Staff was not convinced that ComEd had established that it needed eminent

domain for several of the parcels for which it was requested and recommended against granting the Section 8-503 relief. The Commission rejected Staff's recommendation. The Final Order states:

In the Commission's view, the analysis under Section 8-406(b), where the Commission considers a number of factors, is the analysis which results in the approval of the route of the transmission lines and the site of the substation. Section 8-503, unlike Section 8-406(b), does not require the Commission to examine alternatives. Rather, the focus of Section 8-503 is whether the project is of such importance and necessity so as to direct the utility to complete it, using eminent domain if necessary. The requirements suggested by Staff are not articulated in the Act or the Commission's rules, and have not been used in previous Commission decisions on Section 8-503 petitions.

*(Id.*, p. 6)

Staff reads this language to mean that the Commission's review of the line route is limited to the Section 8-406 Certificate proceeding. Based upon the Commission's decision in Docket No. 05-0188, Staff has adjusted its method of analysis in Section 8-406 Certificate/Section 8-503 authority proceedings. Since the entry of that Order, Staff has presented its Section 8-503 analysis, for eminent domain authority, simultaneously with its Section 8-406 analysis, in order that the Commission may consider the line route at the same time it considers whether it should order the utility to construct the line.

In Docket No. 06-0179, an AmerenIP application for a Section 8-406 Certificate and Section 8-503 authority, Staff recommended, based upon the Commission's action in Docket No. 05-0188, that the Commission should grant eminent domain authority, under Section 8-503 of the Act. Staff filed a Brief on Exceptions recommending that the Commission add language to the

Commission Order regarding Section 8-503 relief to strictly define the authority for use of eminent domain being granted to the utility to tracts along the route adopted in the Commission's Order. In its Reply Brief on Exceptions, AmerenIP argued that limiting the use of eminent domain to the route adopted in the Commission's Order was unnecessary because AmerenIP had not requested eminent domain. AmerenIP committed to file a separate proceeding seeking Commission approval for eminent domain. The Final Order accepted AmerenIP's position. It granted Section 8-503 approval and stated in relevant part:

In view of the clarifications provided in [Ameren's] RBOE relating to the exercise of eminent domain, the conditions proposed in Staff's BOE are not necessary in this order. If Petitioners later determine there is a need to seek eminent domain, they will need to obtain Commission authorization before doing so.

(Order, Docket No. 06-0179, May 16, 2007, p. 40)

This finding is inconsistent with the Commission's Order in Docket No. 05-0188 and Section 8-509 of the Act, which Staff reads to mean that an Order granting Section 8-503 relief provides eminent domain authority without further action on the part of the utility. Aside from this inconsistency, the Commission's Order resulted in a grant of a Section 8-406 Certificate and Section 8-503 authority to AmerenIP for unspecified parcels. The failure to specify the parcels for which the relief was granted was inconsistent with recent petroleum pipeline dockets.

In Docket No. 06-0458, TransCanada Keystone Pipeline LP ("Keystone") (Petition for relief under Sections 8-503, 8-509, 15-401, and 15-501 of the Act),

and in Docket No. 06-0470, Enbridge Energy Partners, L.P. (“Enbridge”) (Petition for relief under Sections 8-503, 8-509, and 15-401 of the Act), the Commission’s Orders set out specifically what parcels would be affected. The Orders limited the eminent domain authority to the tracts of land listed on exhibits of record in the proceeding. (See Order, Docket No. 06-0458, April 4, 2007, p. 25; and Order, Docket No. 06-0470, April 4, 2007, p. 21)

To summarize, in Docket No. 05-0188, where ComEd sought relief pursuant to Sections 8-406 and 8-503 of the Act to construct, operate, and maintain new electric transmission lines, the Order states that when the Commission issues a Section 8-503 Order directing that improvements be made, then Section 8-509 of the Act authorizes the utility to use the power of eminent domain. (Order, Docket No. 05-0188, February 23, 2006, p. 1) In Docket Nos. 06-0458 and 06-0470, where Keystone and Enbridge, respectively, filed Petitions for relief under Sections 8-503, 8-509, and 15-401, and 15-501 of the Act, the Order granted Section 8-503 authority for the proposed pipeline and separately granted Section 8-509 eminent domain authority. In Docket No. 06-0179, where AmerenIP filed an Application for a Section 8-406 Certificate and Section 8-503 authority to construct, operate, and maintain a new electric transmission line, the Order granted the relief requested under Section 8-503 of the Act and found that if AmerenIP needed eminent domain authority, it would file a Petition under Section 8-509 of the Act.

The issue of eminent domain authority is inextricably linked with AmerenCIPS’ request for a Section 8-406 Certificate and Section 8-503 authority

in this docket. It is uncertain whether AmerenCIPS will ultimately need eminent domain to construct the transmission lines. The only meaningful opportunity for a landowner to challenge a request for eminent domain authority would be in connection with the determination of the routes for the electrical transmission lines. The route for a transmission line is one of the issues addressed in a Section 8-406 Certificate and Section 8-503 authority proceeding. Once the Commission approves the line route and issues an Order pursuant to Section 8-503 of the Act, a landowner has no basis to challenge a utility's request for eminent domain authority. The requirement for reasonable attempts to acquire the property may delay a grant of eminent domain, but is unlikely to remove the threat of eminent domain. Staff recommends that the Commission state in its Order that in future Section 8-503 filings, utilities should state in their Petitions that they are also requesting Section 8-509 eminent domain authority.

### **3. Reasonable Attempts to Acquire the Property**

The Commission's approach to a showing by a petitioner of having engaged in reasonable attempts to acquire the property has also been variable. In Docket No. 05-0188, the Commission based its eminent domain decision on Section 8-503 of the Act and whether "the project is of such importance and necessity so as to direct the utility to complete it, using eminent domain if necessary." (Order, Docket No. 05-0188, February 23, 2006, p. 6) The Commission did not address reasonable attempts to acquire the property other than to state that "[t]he evidence suggests that the owners of these parcels are not likely to be intimidated by the threat of legal proceedings." (*Id.*, p. 5) In the

petroleum pipeline dockets, Staff put emphasis in its analysis on whether good faith negotiations had been conducted, connecting good faith negotiations with the public convenience prong of Section 15-401(b) of the Act. This emphasis was also reflected in the Final Commission Orders entered in Docket Nos. 06-0458 and 06-0470. In Docket No. 06-0179, the Commission accepted AmerenIP's position that eminent domain was not an issue in the proceeding (Order, Docket No. 06-0179, May 16, 2007, p. 40); reasonable attempts to acquire the property were not discussed.

In Docket No. 06-0458, Staff's position regarding a grant of eminent domain authority was dependent on Keystone demonstrating that it had negotiated in good faith with landowners along the Illinois route. An interstate petroleum pipeline is not required to obtain a certificate in good standing to operate a pipeline in Illinois; but a certificate is a prerequisite to eminent domain authority. Staff articulated a concern that the Petitioner would use its eminent domain authority for unfair advantage in negotiations with landowners. In rebuttal testimony, after the Petitioner had demonstrated that it had conducted negotiations with landowners, Staff recommended that the Commission should grant the Certificate allowing eminent domain authority.

The Commission's Order in Docket No. 06-0458 granted Section 8-503 authority for the proposed pipeline and separately granted Section 8-509 eminent domain authority. (Order, Docket No. 06-0458, April 4, 2007, p. 24) The Order reflects that the Commission considered whether good faith negotiations had taken place:

The record shows that Petitioner has complied with the requirements of 83 Ill. Admin. Code Part 300 concerning negotiations with landowners for acquisition of rights-of-way, including the filing and distribution of the necessary Informational Packets. The record also shows that Keystone is willing to, has and will continue to negotiate in good faith with landowners along the proposed route of the pipeline for permanent and temporary easement rights, and to make good faith offers of compensation for easement rights based on fair market value of the land. The record shows that Keystone has engaged and continues to engage in reasonable efforts to acquire the necessary easements through negotiations and voluntary agreements with landowners.... The authority to exercise eminent domain granted by this Order shall be limited to the tracts of land listed on Keystone Exhibit 9.2 for which Keystone has not entered into an easement agreement with the landowner(s) through voluntary negotiations, and shall only be exercised with respect to tracts for which Keystone has made an offer to the landowner(s) to acquire the necessary permanent and temporary easements...

(*Id.*, p. 25)

Staff took the same approach in Docket No. 06-0470 where it considered Enbridge's negotiations as part of its determination as to whether the construction of the pipeline would convenience the public. Staff is concerned that absent a requirement from the Commission, a utility has little incentive to begin negotiations prior to obtaining eminent domain authority. However, once eminent domain authority has been granted, the utility's negotiating position will improve appreciably and the property owners' position will be hurt.

Requiring the utility to demonstrate that it has made reasonable attempts to acquire the property is consistent with the "Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights-of-Way by Illinois Utilities" (the "Statement"), which is required to be included in the Informational Packet sent to landowners pursuant to the Commission's

Guidelines for Right-of-Way Acquisitions, 83 Ill. Adm. Code 300. The Statement provides:

[d]uring such hearing(s), the Commission determines, among other things, whether the utility had made a reasonable attempt to acquire the necessary land or land rights through negotiation with the landowner.

(83 Ill. Adm. Code 300, Appendix A)

AmerenCIPS has suggested that the purpose of its proposed second, Section 8-509, proceeding would be for the utility to demonstrate that good faith negotiations or offers failed to produce an agreement. (AmerenCIPS IB, pp. 8-12) However, the Guidelines for Right-of-Way Acquisitions implement and reference both Sections 8-503 and 8-509 of the Act. Thus, there is no clear reason to await a second proceeding after the Commission has granted Section 8-503 relief to address the issue.

After reviewing the Eminent Domain Act (735 ILCS 30/1-1-1, *et seq.*), it seems it would be prudent to avoid the use of the term “good faith negotiations” completely in Commission proceedings. In a subsequent eminent domain proceeding in circuit court, a utility has the burden of demonstrating that prior to filing the condemnation action, it has made good faith efforts to procure the property through negotiation.

A condition precedent to the exercise of the power of eminent domain is an attempt to reach an agreement with the property owner on the amount of compensation. The Eminent Domain Act requires the condemnor to undertake good-faith negotiations with a landowner before filing a condemnation action. *City Of Chicago v. Giuseppe Zappani*, 376 Ill. App. 3d 927; 877 N.E.2d 17, 22; 2007 Ill. App. LEXIS 1165, 10; 315 Ill. Dec. 530, 535 (First District, Second Division, Appellate Court)( 2007).



The Eminent Domain Act provides in relevant part:

(a) When the right (i) to take private property for public use, without the owner's consent, (ii) to construct or maintain any public road, railroad, plankroad, turnpike road, canal, or other public work or improvement, or (iii) to damage property not actually taken has been or is conferred by general law or special charter upon any corporate or municipal authority, public body, officer or agent, person, commissioner, or corporation and when (i) *the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes mentioned cannot be agreed upon by the parties interested, ...*

(735 ILCS 30/10-5-10, emphasis added)

Thus, should AmerenCIPS need to file an eminent domain proceeding in circuit court, the landowners would have the opportunity to raise the issue of whether AmerenCIPS has conducted good faith negotiations. There is no statutory authority for the Commission to make a determination about good faith negotiations. The reference in the Statement to the Commission determining whether the utility made reasonable attempts to acquire the property should not be interpreted in such a way as to affect the later proceedings under the Eminent Domain Act. Therefore, the ultimate finding about good faith negotiations should be left to another forum.

Staff recommends that the Commission should make a determination whether the utility made reasonable attempts to acquire the property. The Commission's Order should avoid using the phrase "good faith" so that the Commission's Order will not operate to estop the landowner from raising the good faith issue in a circuit court proceeding. The determination about reasonable attempts to acquire the property should not be viewed as a review of whether the terms being negotiated are such that they are good faith

negotiations. Rather, the determination about reasonable attempts to acquire the property is another method of assuring that the construction meets the convenience to the public requirement. (See 220 ILCS 5/8-503).

**B. WRB Misstates Staff's Position and Takes No Position Regarding the Central Issue in this Proceeding**

In its Initial Brief, WRB explained its planned expansion at Wood River Refinery ("WRR"), and reiterated the reasons for converting the existing 34.5 kV electricity supply from AmerenCIPS to a 138 kV supply. (WRB IB, pp. 2-5) Staff witness Greg Rockrohr agreed that the change to 138 kV supply was necessary. (ICC Staff Exhibit 1.0, p. 4) However, WRB further stated in its Initial Brief that "...Staff agrees the Transmission Lines are necessary and would provide a more reliable efficient service to WRR and the surrounding customers." (WRB IB, p. 3) While Mr. Rockrohr agreed with that the conversion of electric supply at WRR to 138 kV was necessary, Mr. Rockrohr did not agree that both transmission lines were necessary. In fact, Mr. Rockrohr clearly testified that "...only one of the two 138 kV transmission lines that AmerenCIPS proposes in this proceeding is necessary to supply the WRR load..." (ICC Staff Exhibit 1.0, p.10)

WRB concluded that "...AmerenCIPS should be granted a Certificate of Convenience and Necessity ("Certificate") pursuant to Section 8-406 of the Act to build the subject transmission lines." (WRB IB, pp. 5-6) Mr. Rockrohr explained that, based upon his understanding of Sections 8-406 and 8-503 of the Act, he also supported the Commission's granting of a Certificate for the two transmission lines. Mr. Rockrohr conditioned his recommendation on his

understanding that with the granting of a Certificate under Section 8-406 of the Act, the Commission would be granting AmerenCIPS permission to construct the transmission lines, but that with an Order pursuant to Section 8-503 of the Act, the Commission would be directing AmerenCIPS to construct the transmission lines. Mr. Rockrohr explained that if the Commission instead interprets these two statutes to mean that anytime a Certificate is issued under Section 8-406 of the Act, an Order pursuant to Section 8-503 of the Act is automatically justified, then his recommendation would be that the Commission should issue a Certificate for only the transmission line proposed for the northern-most route, identified in this proceeding as COP Sub Tap 2-Primary, since only one of the transmission lines would be necessary to supply WRR's load. (ICC Staff Exhibit 2.0, pp. 4-5) In its Initial Brief WRB did not take a position regarding a Commission Order pursuant to Section 8-503 of the Act.

## **II. CONCLUSION**

For the foregoing reasons, Staff respectfully recommends that the Commission: (1) grant a Certificate of Convenience and Necessity pursuant to Section 8-406 of the Act for the two 138 kV transmission lines that AmerenCIPS proposes, identified in this proceeding as COP Sub Tap 1-Primary and COP Sub Tap 2-Primary, and (2) issue an Order pursuant to Section 8-503 of the Act directing AmerenCIPS to construct the proposed 138 kV transmission line identified in this proceeding as COP Sub Tap 2-Primary.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda M. Buell". The signature is written in a cursive, flowing style.

LINDA M. BUELL

Counsel for the Staff of the Illinois  
Commerce Commission

July 11, 2008

LINDA M. BUELL  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
Phone: (217) 557-1142  
Fax: (217) 524-8928  
E-mail: lbuell@icc.illinois.gov